

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Mary Kay Monahan,
Appellant,

v.

Douglas County Board of Equalization
Appellee.

Case No: 10R-543

Decision Affirming
County Board of Equalization

BACKGROUND & PROCEDURAL HISTORY

1. The Subject Property is a residential parcel located at 12112 Farnam St., Omaha, Nebraska, with a legal description of: WEST FAIRACRES LOT 9 BLOCK 4 IRREG.
2. The Douglas County Assessor assessed the Subject Property at \$249,700 for tax year 2010.
3. Mary Kay Monahan (herein referred to as the “Taxpayer”) protested this value to the Douglas County Board of Equalization (herein referred to as the “County Board”) and requested a valuation of \$225,000.
4. The County Board determined that the assessed value of the Subject Property was \$249,700 for tax year 2010.
5. The Taxpayer appealed the determination of the County Board to the Tax Equalization and Review Commission (herein referred to as the “Commission”).
6. A Single Commissioner hearing was held on December 3, 2012, at the Omaha State Office Building, 1313 Farnam St., Omaha, Nebraska, before Commissioner Thomas D. Freimuth.
7. James H. Monahan, a licensed Nebraska attorney, was present at the hearing on behalf of his deceased spouse, Mary Kay Monahan, the Taxpayer.
8. Larry Thomsen, an employee of the Douglas County Assessor’s Office, was present for the County Board.

STANDARD OF REVIEW

9. The Commission’s review of the determination of the County Board of Equalization is de novo.¹ “When an appeal is conducted as a ‘trial de novo,’ as opposed to a ‘trial de novo on the record,’ it means literally a new hearing and not merely new findings of fact based upon a previous record. A trial de novo is conducted as though the earlier trial had not been held in the first place, and evidence is taken anew as such evidence is available at the time of the trial on appeal.”²
10. When considering an appeal a presumption exists that the “board of equalization has faithfully performed its official duties in making an assessment and has acted upon sufficient competent evidence to justify its action.”³ That presumption “remains until

¹ See, Neb. Rev. Stat. §77-5016(8) (2012 Cum. Supp.), *Brenner v. Banner Cty. Bd. of Equal.*, 276 Neb. 275, 286, 753 N.W.2d 802, 813 (2008).

² *Koch v. Cedar Cty. Freeholder Bd.*, 276 Neb. 1009, 1019 (2009).

³ *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

there is competent evidence to the contrary presented, and the presumption disappears when there is competent evidence adduced on appeal to the contrary. From that point forward, the reasonableness of the valuation fixed by the board of equalization becomes one of fact based upon all the evidence presented. The burden of showing such valuation to be unreasonable rests upon the taxpayer on appeal from the action of the board.”⁴

11. The order, decision, determination or action appealed from shall be affirmed unless evidence is adduced establishing that the order, decision, determination, or action was unreasonable or arbitrary.⁵
12. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁶

GENERAL VALUATION LAW

13. A Taxpayer must introduce competent evidence of actual value of the subject property in order to successfully claim that the subject property is overvalued.⁷
14. “Actual value, market value, and fair market value mean exactly the same thing.”⁸
15. Taxable value is the percentage of actual value subject to taxation as directed by Nebraska Statutes section 77-201 and has the same meaning as assessed value.⁹
16. All real property in Nebraska subject to taxation shall be assessed as of January 1.¹⁰
17. All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.¹¹
18. Nebraska Statutes section 77-112 defines actual value as follows:

Actual value of real property for purposes of taxation means the market value of real property in the ordinary course of trade. Actual value may be determined using professionally accepted mass appraisal methods, including, but not limited to, the (1) sales comparison approach using the guidelines in section 77-1371, (2) income approach, and (3) cost approach. Actual value is the most probable price expressed in terms of money that a property will bring if exposed for sale in the open market, or in an arm’s length transaction, between a willing buyer and a willing seller, both of whom are knowledgeable concerning all the uses to which the real property is adapted and for which the real property is capable of being used. In analyzing the uses and restrictions applicable to real property the analysis shall include a full description of the physical characteristics of the real property and an identification of the property rights valued.¹²

⁴ *Id.*

⁵ Neb. Rev. Stat. §77-5016(8) (2010 Cum. Supp.).

⁶ *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

⁷ Cf. *Josten-Wilbert Vault Co. v. Board of Equalization for Buffalo County*, 179 Neb. 415, 138 N.W.2d 641 (1965) (determination of actual value); *Lincoln Tel. and Tel. Co. v. County Bd. Of Equalization of York County*, 209 Neb. 465, 308 N.W.2d 515 (1981) (determination of equalized taxable value).

⁸ *Omaha Country Club v. Douglas County Board of Equalization, et al.*, 11 Neb.App. 171, 180, 645 N.W.2d 821, 829 (2002).

⁹ Neb. Rev. Stat. §77-131 (Reissue 2009).

¹⁰ See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009).

¹¹ Neb. Rev. Stat. §77-201(1) (Reissue 2009).

¹² Neb. Rev. Stat. § 77-112 (Reissue 2009).

VALUATION ANALYSIS

19. The County Board submitted an Assessment Report for tax year 2010 at the hearing. The Property Record Profile contained in the Assessment Report for the Subject Property indicates that the County Board's \$249,700 determination for tax year 2010 includes \$45,500 for land and \$204,200 for the improvement component.
20. The Assessment Report's one-page "PVAL" document indicates that the land component of Subject Property was increased in 2008 from \$26,400 to \$45,500 pursuant to a reappraisal by the County Assessor. The parties agreed that the land component of all comparable properties in "West Fairacres" where the Subject Property is located was valued at \$45,500 for tax year 2010.
21. The County's Assessment Report indicates that the County Board's \$204,200 determination attributable to the Subject Property's improvement component for tax year 2010 is based on a sales comparison approach mass appraisal model derived from market area arm's-length sales and multiple regression analysis. Multiple regression analysis assigns value to physical and locational characteristics of real property based on correlation of such characteristics with market area sales.¹³ The Assessment Report for tax year 2010 contains a document entitled "Market Calculation Detail" that sets forth the value assigned to each of the various mass appraisal model characteristics relating to the Subject Property's improvement component.¹⁴
22. Larry Thomsen, an employee of the Douglas County Assessor's Office, indicated that sales in the "two-year look-back period" prior to each tax year are reviewed for purposes of constructing the County's model. Thus, for tax year 2010, the County's model is derived from market area sales that occurred from July 1, 2007 to June 30, 2009.
23. The Taxpayer asserted that the County overvalued the Subject Property with the use of an unreasonable or arbitrary model. In support of this assertion, the Taxpayer submitted documentation analyzing the sale and assessment history of four properties near the Subject Property.
24. The Taxpayer did not submit a fee appraisal of the Subject Property at the hearing before the Commission. The Taxpayer also did not submit Property Record Profiles for the sales analyzed.
25. Based on this analysis, the Taxpayer asserted that the actual value of the Subject Property amounted to \$225,000 for tax year 2010.
26. The Taxpayer's opinion of value relies in part on the use of assessed values of properties near the Subject Property. This approach is not a commonly accepted mass appraisal technique for determining the actual value of real property under Nebraska Statutes section 77-112.
27. The valuation approaches identified under Nebraska Statutes section 77-112 include the sales comparison approach, the income approach, the cost approach, and other professionally accepted mass appraisal methods. The Taxpayer's use of assessed values of properties near the Subject Property is not identified as an appropriate approach under Nebraska Statutes section 77-112. Additionally, the Taxpayer did not provide evidence

¹³ *Property Assessment Valuation*, 3rd Ed., International Association of Assessing Officers, 2010, at pgs. 416, 427.

¹⁴ The Assessment Report contains references to the cost approach, but based on a review of all of the statements and documents submitted at the hearing, the Commission finds that the County relied on its sales comparison approach model to value the Subject Property's improvement component.

that this approach is a professionally accepted mass appraisal or fee appraisal technique. Therefore, while assessed values can provide the basis for relief in the equalization context as discussed below, the Commission is unable to place significant weight on the Taxpayer's \$225,000 opinion of value to the extent it relies on the use of assessed values of comparables.

28. The Taxpayer's opinion of value also relies in part on the use of the average of sales of properties near the Subject Property. The Taxpayer's approach can best be described as an attempt to value the Subject Property using the sales comparison approach.
29. Averaging is not an acceptable part of the sales comparison approach. "Simply averaging the results of the adjustment process to develop an averaged value fails to recognize the relative comparability of the individual transactions as indicated by the size of the total adjustments and the reliability of the data and methods used to support the adjustments."¹⁵
30. The sales comparison approach has a defined systematic procedure that requires, among other actions, that the appraiser "[l]ook for differences between the comparable sale properties and the subject property using all appropriate elements of comparison. Then adjust the price of each sale property, reflecting how it differs, to equate it to the subject property or eliminate that property as a comparable. This step typically involves using the most similar sale properties and then adjusting for any remaining differences."¹⁶
31. The elements of comparison include real property rights conveyed in the sales, any financing terms, condition of the sale, expenditures made immediately after purchase, market conditions, location, physical characteristics, economic characteristics, use and zoning, and any non-realty components of value.¹⁷ Consideration of many of these characteristics is required under Nebraska Statutes section 77-1371, which provides that "[c]omparable sales are recent sales of properties that are similar to the property being assessed in significant physical, functional, and location characteristics and in their contribution to value."¹⁸
32. The Taxpayer's \$225,000 opinion of value does not provide analysis regarding adjustments based on the elements of comparison referenced above. Additionally, the Taxpayer did not submit the Property Profiles for the comparable sales included in the analysis. Thus, the Commission is unable to place significant weight on the Taxpayer's sales comparison valuation. The Commission notes, however, that while a fee appraisal of the Subject Property was not presented at the hearing, a certified appraiser would derive assistance from the information analyzed by the Taxpayer.
33. Guidance for purposes of applying the sales comparison approach is widely available in the case where a Taxpayer determines that it is not cost effective to obtain a fee appraisal. For example, the Commission is allowed by statute and by its rules and regulations to consider many publications that provide guidance regarding the sales comparison approach and other valuation techniques. These publications, which are listed at the Commission's "Rules/Regulations" website link (Chapter 5, section 031), can be found at area public libraries and law school libraries. Guidance regarding valuation techniques can also be found at the Commission's "Decisions" website link.

¹⁵ *The Appraisal of Real Estate*, 13th Edition, Appraisal Institute, 2008, at p. 308.

¹⁶ *The Appraisal of Real Estate*, 13th Edition, Appraisal Institute, 2008, at pgs. 301 - 302.

¹⁷ *The Appraisal of Real Estate*, 13th Edition, Appraisal Institute (2008) at 141.

¹⁸ Neb. Rev. Stat. §77-1371 (Reissue 2009).

34. The Commission also notes that section 8 of the Order for Single Commissioner Hearing issued to the parties in this matter at least 30 days prior to the hearing provides as follows:

NOTE: *Copies of the County's Property Record File for any parcel you will present as a comparable parcel should be provided so that your claim can be properly analyzed. The information provided on the County's web page is not a property record file. A property Record File is only maintained in the office of the County Assessor and should be obtained from that office prior to the hearing.*

GENERAL EQUALIZATION LAW

35. "Taxes shall be levied by valuation uniformly and proportionately upon all real property and franchises as defined by the Legislature except as otherwise provided in or permitted by this Constitution."¹⁹ Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.²⁰ The purpose of equalization of assessments is to bring the assessment of different parts of a taxing district to the same relative standard, so that no one of the parts may be compelled to pay a disproportionate part of the tax.²¹
36. In order to determine a proportionate valuation, a comparison of the ratio of assessed value to market value for both the subject property and comparable property is required.²²
37. Uniformity requires that whatever methods are used to determine actual or taxable value for various classifications of real property that the results be correlated to show uniformity.²³ Taxpayers are entitled to have their property assessed uniformly and proportionately, even though the result may be that it is assessed at less than the actual value.²⁴
38. The constitutional requirement of uniformity in taxation extends to both rate and valuation.²⁵ If taxable values are to be equalized it is necessary for a Taxpayer to establish by "clear and convincing evidence that valuation placed on his or her property when compared with valuations placed on similar property is grossly excessive and is the result of systematic will or failure of a plain legal duty, and not mere error of judgment [sic]."²⁶ "There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity."²⁷
39. "To set the valuation of similarly situated property, i.e. comparables, at materially different levels, i.e., value per square foot, is by definition, unreasonable and arbitrary, under the Nebraska Constitution."²⁸

¹⁹ *Neb. Const.*, Art. VIII, §1.

²⁰ *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

²¹ *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991); *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623, (1999).

²² *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623 (1999).

²³ *Banner County v. State Board of Equalization*, 226 Neb. 236, 411 N.W.2d 35 (1987).

²⁴ *Equitable Life v. Lincoln County Bd. of Equal.*, 229 Neb. 60, 425 N.W.2d 320 (1988); *Fremont Plaza v. Dodge County Bd. of Equal.*, 225 Neb. 303, 405 N.W.2d 555 (1987).

²⁵ *First Nat. Bank & Trust Co. v. County of Lancaster*, 177 Neb. 390, 128 N.W.2d 820 (1964).

²⁶ *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

²⁷ *Id.* at 673, 94 N.W.2d at 50.

²⁸ *Scribante v. Douglas County Board of Equalization*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999).

EQUALIZATION ANALYSIS

40. The Taxpayer asserted that the Subject Property was overvalued in comparison to the assessed valuations of nearby properties. In support of this assertion, the Taxpayer submitted documentation analyzing the assessment history of four properties near the Subject Property (as indicated above, the Taxpayer did not submit the Property Record Profiles for these four parcels).
41. As indicated previously, an order for equalization requires evidence that either: (1) similar properties were assessed at materially different values;²⁹ or (2) a comparison of the ratio of assessed value to market value for the Subject Property and other real property **regardless of similarity** indicates that the Subject Property was not assessed at a uniform percentage of market value.³⁰
42. The Commission is unable to determine whether any of the four parcels submitted by the Taxpayer are similarly situated or comparable for equalization analysis purposes because Property Record Profiles were not submitted at the hearing. The Commission also finds that the Taxpayer did not provide sufficient evidence of the ratio of assessed value to market value with respect to the Subject Property or the alleged comparables to obtain equalization relief.

CONCLUSION

43. The Taxpayer has not produced competent evidence that the County Board failed to faithfully perform its duties and to act on sufficient competent evidence to justify its actions.
44. The Taxpayer has not adduced sufficient, clear and convincing evidence that the determination of the County Board is unreasonable or arbitrary and the decision of the County Board should be affirmed.

ORDER

IT IS ORDERED THAT:

1. The Decision of the Douglas County Board of Equalization determining the value of the Subject Property for tax year 2010 is affirmed.
2. That the taxable value of the Subject Property for tax year 2010 is:

Land	\$ 45,500
Improvements	\$204,200
Total	\$249,700

²⁹ See, *Scribante v. Douglas County Board of Equalization*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999).

³⁰ See, *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623, 635 (1999).

3. This decision and order, if no further action is taken, shall be certified to the Douglas County Treasurer and the Douglas County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2012 Cum. Supp.)
4. Any request for relief, by any party, which is not specifically provided for by this order is denied.
5. Each Party is to bear its own costs in this proceeding.
6. This decision shall only be applicable to tax year 2010.
7. This order is effective on January 16, 2014.

Signed and Sealed: January 16, 2014.

Thomas D. Freimuth, Commissioner